IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/10/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION No.9052 OF 1997

K.Muthu ... Petitioner

-Vs-

1. The Presiding Officer,
Labour Court,
Trichy.

2. The Management of
Chola Textiles (P) Ltd.,
Minikkampatti,
Vedachendur,
Dindigul Anna District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the relief as stated therein.

For petitioner : No appearance

^For R.2 : Mr.Karthik for
M/s.T.S.Gopalan & Co

:O R D E R

The above Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in I.D.No.163 of 1995 dated 12.12.1995 and quash the same.

2. On 1.10.2004, when the above matter has been taken up for consideration, no representation was offered on the part of the petitioner in spite of the learned counsel for the second respondent is present and ready to argue the matter and hence this Court is left with no choice but to reserve the orders in the above writ petition for appreciation of the facts and circumstances of the case, after hearing the learned counsel for the second respondent and on perusal of the materials placed on record.

3. In the affidavit filed in support of the above writ petition, the petitioner would submit that he joined the Spinning Department of the second respondent/Management on 10.7.1987; that he joined the Coimbatore Textile

Workers Union, which is affiliated to the Hind Mazdoor Sabha, along with 125 employees of the second respondent; that on 22.5.1992, all the newly joined members of the said Union conducted a flag hoisting programme opposite the second respondent Mill and he was elected as an Office Bearer of the said Union; that the second respondent Management disliked his active participation in the Union and on 22.5.1992 he was removed from service by an oral order without serving any notice or conducting any domestic enquiry and simultaneously, on 23.5.1992, the second respondent Management also removed the flag post through their coolies for which he lodged a police complaint against the second respondent Management; that on 5.6.1992, he addressed a letter to the Manager of the second respondent Management requesting to allow him for work.

4. The petitioner would further submit that again on 1.6.1992, on behalf of the Union, he arranged a flag hoisting programme opposite the Mill and the Management attacked the Union workers with some rowdy elements who used dangerous weapons including cycle chain as a result of which the members of the Union received grievous injuries and hence he lodged a police complaint before the Vedachandur Police Station; that once again on 28.7.1992, he arranged a flag hoisting programme with the legal permission opposite the second respondent Management and knowing the programme, the second respondent Management has lodged a false complaint before the Police against the petitioner and others as a result of which the Police arrested the petitioner and five others on 27.7.1992; that even with the full tolerance of the above arrest incident, on 28.7.1992, the flag hoisting programme was peacefully conducted by the Union with the help of police protection; that the coolies of the second respondent/Management pelted stones on the Union Members who were returning from the flag hoisting programme and they received grievous injuries due to the above attack instigated by the Management and the police also caused injuries due to unruly attack by the coolies of the Management; that immediately, the police entered the second respondent Management Mill and also arrested 25 coolies of the Management; that for the above incident, the Management made a false complaint against 115 Union Members.

5. The petitioner would further submit that on 10.6.1992, he raised an Industrial Dispute before the Labour Officer for conciliation for his removal from service of the second respondent Management and the Management has stated before the Conciliati fficer that the petitioner had resigned from the job and that they have issued the service certificate of the petitioner and hence he had no locus standi to raise the Industrial Dispute before the conciliation Officer; that the above statement of the Management is totally false for the reason that the Management had forged the documents including his resignation letter and payment voucher; that at the time of joining, the Management had obtained his three signatures on papers, payment voucher and another letter pad of the Management which was utilised by the second respondent Management to show that he had resigned from the job on 22.5.1992; that on 9.9.1992, the Conciliation Officer issued a Failure Report and on that he raised an Industrial Dispute before the Labour Court and since the same was dismissed by the Labour Court, he has come forward to file the above writ petition on certain grounds as brought forth in the grounds of writ petition praying for the relief extracted supra.

6. The firm stand taken on the part of the second respondent/ Management both before the Labour Court and this Court during arguments is that the petitioner worked with them from 10.7.1987 to 21.5.1992 and on 22.5.1992, on his own accord, he resigned from his job and hence his accounts were settled on the same day itself; that Service Certificate of the petitioner was also issued to him; that it was not the practice to obtain any signature in any advance voucher and payment voucher or letter of the respondent and the allegations about the installation of the flag post and consequent incidents are false and it is a story twisting the truth; that the six persons who also resigned the job along with the petitioner have also raised the dispute before the Conciliation Officer and they have admitted before the conciliation Officer the fact of their resignation and receiving money in settlement of their accounts and prayed for some more ex-gratia and accordingly the second respondent Management had also accepted and paid a sum of Rs.6,000/= to each of them.

7. The learned counsel for the second respondent would further submit that the Labour Court in full consideration of all the facts and circumstances of the case has dismissed the plea of the petitioner for reinstatement by its Award dated 12.12.1995, but the petitioner had filed this Writ Petition on 23.6.1997 i.e. after a period of 1 = years and if really he is interested in getting the reinstatement, he should have pursued the matter carefully and approached the Court at the earliest. The learned counsel for the second respondent would further submit that if his signatures were taken in blank papers, he should have mentioned it before the conciliation, which is the earliest opportunity afforded to him, but he has not raised such a plea before the Conciliation Officer. On such grounds, the second respondent would pray to dismiss the above writ petition.

8. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the second respondent alone with no representation made on the part of the petitioner, since this Court has to decide the above writ petition based on those materials made available on record and upon hearing the learned counsel for the second respondent, what comes to be known is that the above writ petition has been filed praying to quash the Award of the first respondent dated 12.12.1995 made in I.D.No.163 of 1995 and to pass further or other orders as may be deemed fit and proper.

9. The contentions of the petitioner, in short, are that he joined the second respondent Management on 10.7.1987 as a permanent employee and his last drawn monthly salary was Rs.700/=; that himself and 125 other employees had joined the Coimbatore Textile Union (SMS) and on 22.5.1992, they hoisted the SMS flag opposite to the Mill on account of which differences arose in between the Management and the petitioner since he was an Office Bearer of the said Workers Union and many unpleasant incidents took place, ultimately resulting in the petitioner having been removed from the services of the second respondent Management by an oral order.

10. The petitioner would offer such instances of hoisting the flag as

on 22.5.1992, 23.5.1992, 1.6.1992 and on 28.7.1992 and the Management removing the same through their henchmen; that the petitioner and five other workers were also alleged to have been arrested on 27.7.19 92 at the instance of the second respondent Management. He would further cite yet another incident that occurred on 28.7.1992 in which the police caused the arrest of the 25 henchmen of the second respondent Management.

11. The further case of the petitioner is that against the removal of the petitioner from the services of the second respondent, he moved for Conciliation before the Conciliation Officer for a remedy and since it ended in failure, on a failure report had been made on the part of the Officer concerned, the petitioner approached the Labour Court for remedy and the Labour Court also having conducted an enquiry since concluded that the non-employment of the petitioner was justifiable, thus ultimately dismissing the petition filed by the petitioner, left with no choice, the petitioner has come forward to file this writ petition.

12. Before the Labour Court, the petitioner has testified himself as a witness on his side and on the part of the second respondent Management also, one witness was examined. Besides these oral evidence let in on the part of both, the petitioner has marked six documents as Exs.W.1 to W.6, they respectively being the letters by the petitioner's Union to the second respondent dated 22.5.1992 with postal acknowledgment in original dated 26.5.1992, letter by the petitioner to the respondent dated 5.6.1992 with postal acknowledgment in original dated 6.6.1992, the original receipt given by the S.I. of Police, Vedasandur dated 23.5.1992 and the original letter addressed by the second respondent to the Labour Officer, Dindigul dated 17.8.1992. On the part of the second respondent Management, nine documents would be marked as Exs.M.1 to M.9, they being respectively the Registration Letter of the petitioner, the payment voucher by the second respondent to the petitioner, the service certificate issued by the second respondent to the petitioner, letter by the petitioner to the second respondent, letter by the Labour Officer to the second respondent, letter by the petitioner to the Labour Officer, Dindigul, conciliation failure report, standing order of the second respondent Management and the xerox copy of the receipt issued by the petitioner.

13. A perusal of the Award of the Labour Court would only depict a dark picture and commission of patent errors and perversity in approach since absolutely there is no mention or consideration of the oral evidence let in by the witnesses particularly on the part of the petitioner. It is more hideous and pathetic to note from the Award of the Labour Court that the exhibits marked on the part of the Management as Exs.M.1 to M.9 have been taken as Godsaying without any discussion held on them. Nor did he hold discussion on those exhibits marked by the workmen barring the only Ex.W.5, the receipt showing the complaint lodged by the petitioner to the police dated 23.5.1992. No other document marked on the part of the petitioner has been either takenup for consideration or any discussion held for any reason assigned on the part of the Labour Court. Even the document mentioned in the Award has been referred only to remark that the copy of the complaint has not been filed as though the Labour Court, in the circumstances of the case filed on the part of

the petitioner, has no knowledge of the dates and events mentioned therein for the trouble that has arisen in between the Management and the workers Union of which the petitioner was an Office Bearer as claimed on the part of the petitioner and as though the Labour Court is bereft of its power to consider the oral evidence adduced on the part of the petitioner to the said effect so as to arrive at its own conclusions regarding the receipt issued by the police in favour of the petitioner marked as Ex.M.5 on the part of the petitioner. This attitude adopted on the part of the Labour Court would only establish that the Labour Court had pre-determined the issue so as to pass an Award in favour of the Management and that is why it did not have the mind to either assess the oral evidence which, in the event of proper consideration, might go against the Management and therefore it may not be out of place or unreasonable on the part of this Court to mention that the Labour Court has decided the matter on extraneous considerations and not as it is required under law.

14. Even those documents marked on the part of the Management, have not been considered in their proper perspective and without any discussion held on them, the manner in which the Labour Court has accepted the veracity of all those documents as they have been attributed to have come into existence on the part of the Management, would only create still more doubts regarding the genuineness of the Award passed by the Labour Court.

15. In the above circumstances, it is only safe to conclude that neither the Labour Court has decided the industrial dispute raised on the part of the petitioner in full consideration of the facts and circumstances of the case as put up by the petitioner and resisted on the part of the Management following the procedures established by law so as to arrive at a valid and impartial decision and therefore the only conclusion that this Court could arrive at is that the Award passed by the Labour Court is not a fair one passed as required under law and hence it has to be decided that the award of the labour Court was not on merits nor in accordance with law and the same becomes only liable to be quashed.

16. On the other hand, it is an admitted fact that the petitioner has been employed in the second respondent Management from 10.7.1987 till 22.5.1992 i.e. almost for a stretch of five years, as a permanent employee, drawing a salary of Rs.700/= when he was ejected from the service of the second respondent Management all of a sudden, almost on a single day, as though the petitioner resigned from the services of the second respondent employment on his own along with others, without assigning any reason for such a drastic situation to arise for only those selected employees to resign from their employment.

17. If the allegations raised on the part of the workman/petitioner regarding the instances narrated by him to have occurred before and after the date of ejection of the petitioner from service on 22.5.1992 are to be considered, it would come to be seen that the employees of the second respondent have started the Union under the name and style of Coimbatore Textile Workers Union affiliated to Hind Mazdoor Sabha with the membership of 125 employees of the second respondent Management and the flag hoisting

programme having been sabotaged on the part of the Management, some untoward incidents took place as per the narration of the dates and events in a sequel manner and under such circumstances, the police complaint said to have been lodged on 23.5.19 92 by the petitioner for which the receipt has been issued by the concerned police and the Management coming forward to claim that a day before the complaint that was on 22.5.1992, the petitioner resigned from the employment of the second respondent if looked into in the light of the oral evidence advanced on the part of the petitioner, it would only create a very strong suspicion to the claim of the Management that the petitioner volunteered to resign from the employment of the second respondent Management and therefore the documents advanced on the part of the Management to the effect of the resignation i.e. under Ex.M.1 dated 22.5.1992, the payment voucher given by the second respondent under Ex.M.2 dated 22.5.1992, the service certificate issued by the second respondent to the petitioner under Ex.M.3 dated 22.5.1992 should have been subjected to very strict scrutiny by the Labour Court particularly in view of the fact that it is claimed on the part of the petitioner that they have not been given by him on that particular date on which it is claimed that the petitioner resigned from the job that was on 22.5.1992 but making use of those signatures obtained in blank papers at the time of joining the employment of the second respondent, everything had been done in a stage-managed manner.

18. Many instances have been given on the part of the petitioner to the effect that blank papers and letter heads in which his signatures were obtained have been obtained at the time of late Chief Minister Mr.M.G.Ramachandran in office and therefore the definite case of the petitioner that he having been dead as early as in the year 1987, there was no reason for the said documents to have been used as on 22.5.1992 i.e. after five years which would only consolidate the case of the petitioner further revealing that the Labour Court did not have a mind to go through all these aspects nor to discuss the same nor arrived at a valid conclusion.

19. Further more, the Labour Court itself has extracted in para No.3 of its Award the materials from the counter filed by the Management to the effect that it was not the practice of the Management to obtain any signature in any advance voucher or payment voucher or letter of the respondent which would only go to show that these vouchers and documents were manipulated and make-believe documents and they have no authenticity without bearing the signature of the petitioner for having acknowledged those vouchers and therefore the only unshakable conclusion that could be arrived at on the totality of the circumstances on a overall consideration of the facts is that the Management taking advantage of the situation had not only acted in a highhanded manner in quelling the genuine rights of its employees in starting the Labour Union for protecting their genuine rights but also sacked the petitioner who is an Office Bearer of the Union by adopting unfair trade practice and subjugating his rights by making use of documents which were made to sign by the petitioner at the time of joining the service in the year 1987 and hence this Court is of the view that it is a case in which the only conclusion that could be arrived at is that the Labour Court has failed in its duties and responsibilities to approach the issues raised on the part of the petitioner in the Industrial Dispute and acting in a partial manner and

without following the procedures established by law, it has arrived at a wrong conclusion just contrary to the true facts and circumstances and hence the Award passed by the Labour Court only becomes liable to be quashed and the same is ordered accordingly. Needless to mention that the petitioner is entitled to reinstatement in service with all his backwages and attendant benefits with continuity of service as though he has been serving in the second respondent Management all these days continuously from the date of his appointment till date and hence the following order:

In result,
(i) the above Writ Petition is allowed.
(ii) The Award dated 12.12.1995 made in I.D.No.163 of 1995 by the Labour Court, Trichy is hereby quashed.

(iii) The second respondent is directed to reinstate the petitioner forthwith with all his backwages and attendant benefits and with continuity of service as though he has been serving in the second respondent Management all these days continuously from the date of his appointment till date.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes

Rao

To

The Presiding Officer,
Labour Court,
Trichy.